United States Supreme Court.

THE ALLEGHANY COMPANY,
Defendant in Error,

vs.

ISAAC N. E. ALLEN and ano.,
Plaintiffs in Error.

POINT III.

Comity.

We doubt if the discussion of comity is at all proper in this connection, but the Supreme Court of New Jersey invoked it as a foundation for sustaining the demurrers.

As far as State statutes are concerned, the law of comity has been merged in § 1, Art. IV of the Constitution, and the indefinite "Private International Law" or comity has become fixed in our fundamental law. Moreover, the law of interstate comity as applied to "public acts," and crystallized in the Constitution, has been interpreted very forcefully in Chicago & Alton R. R. v. Wiggins Ferry Co., 119 U. S., 615, as follows:

"The constitutional requirement that 'full faith "'and credit shall be given in each State to the "'public acts, records and judicial proceedings of "'every other State' implies that *the public acts of "every State shall be given the same effect by the "Courts of another State that they have by law and "usage at home.*"

There can be no question that this quotation disposes of the demurrer to the second defense, setting up the New York statute, for the New Jersey Court admits (p. 24 of "Addition") that "the New "York statute * * * provides that no suit on "it shall be maintained in that State," *i. e.*, the prohibited contract is *unenforceable* at home where made. But to use the language of 119 U. S., 615, "the public acts of every State (N. Y.) shall be "given the *same effect* by the Courts of another "State (N. J.) that they have by law and usage at "home," *i. e.*, a contract prohibited by statute is unenforceable in New Jersey as well as New York.

POINT VII.

The New Jersey Opinion.

The writer first appeared as counsel in this litigation before the Court of Errors and Appeals, preparing the brief and making the argument. He has just re-read the respondent's brief before that Court and finds that it makes no reference whatever to any infirmity in the pleadings. The writer had no intimation of such alleged infirmity until he saw it in the opinion of the Court of Errors and Appeals and was led to believe from the "'pecifications of Causes of Demurrer" at top of page 15 of "Transcript," that it was the foreign *statutes*, not the pleadings that were claimed to be at fault (see p. 59 of Brief).

POINT IX.

Federal Questions.

The pleadings indicate that a federal question is involved. The answer sets forth the statutes in

full and alleges that by reason of these statutes the plaintiff ought not to prevail. Under the demurrer the statutes are admitted the same as if proved on the trial. In other words, the answer alleges affirmatively the foreign statutes and asks that they be given full force and effect in the State of New Jersey as in the States of Pennsylvania and New York. We have never known a case where a pleading of this character set out Section 1 of Article IV, for the very good reason that every pleader expects justice in the lower court.

"Public acts" (§ 1; Art. IV) include State statutes.

> Finney v. Guy, 189 U. S., 335;
> Manley v. Park, 187 U. S., 547;
> Chicago & Alton R. R. v. Wiggins Ferry Co., 119 U. S., 615.

A *mere* question of the construction of a statute of another State does not present a federal question.

> Johnson v. N. Y. Life Ins. Co., 187 U. S., 491.

This rule is not absolute, and the true rule is laid down in Finney v. Guy, 189 U. S., 335, where it is said:

"Where a case turns upon the construction by a "State Court of a statute of another State, and not "upon the validity of such statute, a decision on "that question is *not necessarily* of a Federal "character. *It depends upon the particular facts "of each case,* and the manner in which they are "presented, how far such questions can be regarded "as coming under the full faith and credit clause "of the Constitution."

A hard and fast rule that the construction of the statutes of one State by the Courts of another do

not present a federal question might lead to a practical nullification of Section 1, Article IV, and we take it that this case is one where an erroneous construction of the statute of another State is legal error that should be corrected by the U. S. Supreme Court.

Allen & Co., a New York firm, entered into a contract in New York, with a foreign corporation; such contract was made with reference to, and subject to, the limitations of a New York statute. Allen & Co. are entitled—not as a favor—but as an absolute right, to the full protection of that statute and of the Constitution of the United States. The Constitution *guarantees* to them the absolute right of the *real* New York statute "being given the same effect by the Courts of" every State. The Constitution does not say that full faith and credit shall be given to the public acts of every State in accordance with the construction of the statute that any State may see fit to make. Allen & Co. cannot thus be deprived of their absolute rights under the *real* New York statute. The erroneous judgment of the New Jersey Court cannot repeal the New York statute and Section 1, Article IV of the Constitution at the same time. As far as Allen & Co. are concerned, the New Jersey Court has repealed the New York statute by an erroneous construction. Well may we paraphrase a current saying: "I care not who makes the laws of the land, if I be permitted to construe them." "Construction" is the instrument made use of by New Jersey to circumvent Section 1, Article IV and prevent full faith and credit being given to a public act of New York.

What the *real* New York statute is is to be determined, first, by the Courts of the State of New York, and untimately, by the United States Supreme Court, which is the final arbiter of all laws.

What the Constitution guarantees to Allen & Co. under the New York statute is not a question of construction; it is a question of fact; and if the New Jersey Court by an erroneous construction of a New

York statute, deprived Allen & Co. of their absolute right to have full faith and credit given to the real New York statute, it becomes necessary for the United States Supreme Court to step in and determine the question of fact as to what is the real New York statute; otherwise the protection of the Constitution may be annulled.

We learn from U. S. vs. Alger, 152 U. S., 384, that "where the meaning of the statute appears to this "Court to be perfectly clear, no practice inconsistent "with that meaning could have any effect," and if it should appear to this Honorable Court that the wording of the New York statute is perfectly clear, and that, under a line of decisions in the State of New York running through a hundred years, a contract prohibited by law is absolutely void, then it would be the duty of the Supreme Court to step in and say to the State of New Jersey, "You shall not "repeal the New York statute and enforce a contract "in New Jersey that is absolutely void in New York. "We will require New Jersey to give a true construction (full faith and credit) to the New York statute."

In other words, nothing can repeal the New York statute and the Constitution, excepting the New York Legislature and the people of the Union. Neither can be repealed by indirection, or by a false construction of any Court. Nevertheless, the State of New Jersey has, in effect, nullified the New York statute and the Constitution when an action is brought in New Jersey, by giving it a construction that is wholly erroneous.

Construction of the State Statutes.

There is no question of the construction of the Pennsylvania statute. The New Jersey Court admits that the contract is absolutely void under the Pennsylvania law.

There is no question of the construction of the New York statute in so far as the prohibited con-

tract is held "unenforceable" in New York. That much the New Jersey Court admits.

We do not abandon the position that there is no difference between an unenforceable and void contract. A contract is unenforceable because it is void, and it is void because the statute says it shall not be enforced.

If we be right that New Jersey has no more right to enforce an unenforceable contract than it has a void contract; or if an unenforceable contract is void; or if, under the New York decisions, the contract in question is absolutely void, then the State of New Jersey has not given full force and effect to the New Jersey statute. That is a *fact,* and it does not matter by what means that fact is accomplished; it is a violation of Section 1, Article IV. A man is just as dead whether he knew the gun was loaded or not, when he blew down the barrel. The effect on the real New York statute and on Allen & Co. is just the same, whether the New Jersey Court misconstrues the statute through ignorance or design. We deem it to be a self-evident proposition that ignorance of the law on the part of a Court has no more effect in destroying rights under a statute and the Constitution, than ignorance of the same law by a lawyer, and it is as much the duty of the Supreme Court to detect ignorance in one direction as in another.

The argument that the New York statute says that no action shall be maintained on the contract "in this State" implies that it might be enforced elsewhere, needs no answer. It would be the height of presumption for New York to put into a statute that a contract should not be enforced in another State. And we know of no similar statute which says, in terms, that such a contract is void.

The old New York law was similar to the present Indiana law, and a large number of Indiana cases have held that contracts under that law are void and unenforceable.

Sufficiency of Pleadings.

We are aware that the sufficiency of a pleading does not, in general, present a federal question. However, if an erroneous interpretation of a pleading has the effect of repealing a State statute, rather than enforcing it and giving it full faith and credit, it necessarily becomes a federal question, just as in the case of the erroneous construction of a statute. The New Jersey Court cannot be permitted to interpret away the law. The United States Supreme Court is the house of refuge to which all the oppressed run to get exact justice. As far as Allen & Co. are concerned, the New Jersey Court has repealed the Pennsylvania statute by what we deem to be a false interpretation of the pleading. Allen & Co. have absolute rights under Section 1 of Article IV, and the Pennsylvania statute, and it is the duty of the United States Supreme Court to enforce those rights when they are denied in any way whatsoever.

The answer is as broad as the declaration. If the declaration alleges goods sold, so does the answer. If the declaration refers to a note only, the answer refers to nothing more. If the declaration refers to a note only, the giving and receiving of that note was an act of business; otherwise it could not be sued upon. You cannot sue upon an act of amusement. If the Alleghany Company transacted even a minute piece of business with Allen & Co. in the State of Pennsylvania, while their headquarters were in that State, and they were transacting business there, then the statute prevails, and the contract is void.

It must be left to the trial to determine whether this is a New York or a Pennsylvania contract. It may be either or both. The sale may have been in one State and the note given in another. As nearly everything was done by letter, this question would probably be determined by the Court, not by the jury.

A question of one member of the Court suggested a doubt as to whether a State statute simply declaratory of the common law could be made the subject of a federal question. The answer is that statutes are statutes, and the Constitution makes no distinction as to varieties of public acts. Moreover, there is the strongest possible argument for giving full faith and credit to a statute that conforms to the common law even more than to one which might be different from the common law, and thus give rise to an excuse for a variety of interpretations.

Respectfully submitted,

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